

Internal Revenue Service  
**memorandum**

**INCOME TAX AND ACCOUNTING**

date: DEC 20 1991

to: Regional Commissioner, Midwest Region  
Attn: Regional Problem Resolution Office

from: Assistant Chief Counsel (Income Tax & Accounting)

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subject: Abatements of Tax

This is in response to your request for amplification of our memorandum of February 5, 1991, to the District Director, Milwaukee District concerning abatement of tax on balance due accounts as an alternative to requiring the taxpayer to pay the balance due and file a claim for refund.

Abatements are covered by section 6404 of the Internal Revenue Code. Section 6404(a) authorizes the Service to abate the unpaid portion of the assessment of any tax which is excessive in amount, assessed after the expiration of the period of limitations, or erroneously or illegally assessed. Section 6404(b) provides that no claim for abatement may be filed by a taxpayer in respect of an assessment of any income tax. Section 6404(c) of the Code provides that the Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due. In 1986, section 6404(e)(1) was added. This section permits the Service to abate assessments of interest attributable to errors and delays caused by the Service. This provision is generally effective for interest accruing with respect to deficiencies or payments for tax years beginning after December 31, 1978. In 1988, section 6404(f) was added. This section permits the Service to abate any portion of any penalty or addition to the tax attributable to erroneous written advice provided to the taxpayer by the Service. This provision is effective for advice requested on or after January 1, 1989.

Because taxpayers are precluded by section 6404(b) of the Code from requesting an abatement of the income tax itself, our memorandum to Milwaukee concerned the discretionary authority granted the Service in section 6404(c). In telephone conversations with Gloria Anderson, it

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was determined that Service Centers are retaining substantiated Forms 1040X for abatement consideration in some balance due cases, but in cases where the Forms 1040X are filed more than three years after the return had been filed they are being returned to the taxpayer with a statement that a claim for credit or refund cannot be considered until the balance due has been paid. In some instances this procedure results in the taxpayer being barred from subsequently filing a claim for credit or refund for amounts paid more than 2 years previously.

You asked in which of the situations presented by Ms. Anderson in the memorandum from Milwaukee may the Service abate the tax. It is our opinion that the Service has the discretionary authority pursuant to section 6404(c) of the Code to abate the tax in every situation presented. Each of the cases presented involve situations in which it could be determined that the administration and collection costs would not warrant collection of the amount actually due. Based on such a determination, the Service would have the authority to abate the tax. However, section 6404(c) requires that a determination that the costs do not warrant collection of tax be made under uniform rules prescribed by the Secretary. Uniform rules are necessary in order that the abatement authority under section 6404(c) be exercised in a consistent manner. Such rules have not yet been established. Thus, the Services Centers receiving Forms 1040X in the situations described have no means for determining whether abatement is appropriate under the authority of section 6404(c).

Therefore, we believe that uniform rules for determining whether abatement is appropriate should be established. Only by establishing such rules can the discretionary abatement authority of section 6404(c) be exercised in a uniform and consistent manner and in accordance with the legislative intent of the statute.

We hope this information is helpful. Should additional questions arise please contact Philip Scott on my staff at FTS 566-3826.

Attachment

Copy of incoming memorandum